

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

ROSA ALANIS,)	
)	
Appellant/Defendant below,)	
)	
v.)	C.A. No. CPU6-10-002030
)	
GAUTAMKUMAR I. BRAHMBHATT,)	
)	
Appellee/Plaintiff below.)	

Submitted: May 26, 2011

Decided: May 26, 2011

Michael F. McGroerty, Esq., counsel for Appellant.

Eric M. Howard, Esq., counsel for Appellee.

DECISION ON APPELLANT’S MOTION TO DISMISS

Appellant/Defendant-below, Rosa Alanis (“Appellant”), filed this motion to dismiss on the ground that Appellant/Plaintiff-below, Guatamkumar I. Brahmbhatt (“Appellee”), is not the real party in interest. For the reasons set forth herein, Appellant’s motion is **GRANTED**.

Appellant filed this appeal *de novo* after the Justice of the Peace found in favor of Appellee. The trial court below apparently permitted Appellee to prosecute this matter in his own name and for himself, even though he signed the complaint as “For: Shree Sainath Inc.,” and averred in the complaint that he was “running for his brother in his absence.” Appellee is not a member of the Delaware Bar licensed to practice law in this State.

The Court reserved decision after hearing the matter and asked the parties to submit briefs and affidavits in support of their positions. Appellant filed a letter brief supported by an affidavit and exhibits. Appellee has filed nothing in response. Because Appellee failed to defend the motion as provided by Court of Common Pleas Civil Rule 55(b), Appellant is entitled to default judgment.

In any event, it is clear from the record and Appellant's submissions that this action must be dismissed. Appellee was the named plaintiff in the case caption below, as here. However, as stated above, in the similar Complaints filed both in Justice of the Peace Court originally and in this Court on appeal, Appellee signs each Complaint on a signature line that states: "For: Shree Sainath Inc." Further, Appellee avers in both Complaints that he is "[r]unning [presumably the corporation] for his brother in his absence." Although Appellee Brahmhatt may have been able to appear in Justice of the Peace Court as a non-lawyer representative of his brother's corporation under that Court's Civil Rule 91, only a member of the Delaware Bar may file a complaint on behalf of a corporation in this Court.¹ Further, Appellee, by his own averment, is not the real party in interest in this matter; it is either his unnamed brother, or Shree Sainath, Inc., the corporation on whose behalf Appellee purports to sign the Complaint. Despite Appellant's objection that this action is not prosecuted in the name of the real party in interest², neither Appellee nor his counsel have yet sought to join or substitute the real party in interest, or indeed to respond to the present motion, despite the passage of more than a reasonable amount of time to

¹ See CCP Civ. R. 5 (aa)(1); *Transpolymer Industries, Inc. v. Chapel Main Corp.*, 582 A.2d 936 (Del. 1990)

² See CCP Civ. R. 17 (a).

do so. The action therefore may be dismissed under this Court's Civil Rule 17 (a).

For all of the foregoing reasons, Appellant's motion is GRANTED. Judgment is entered in favor of Appellant-Defendant below Rosa Alanis, and against Appellee-Plaintiff Gautamkumar I. Brahmbhatt. Costs of suit are awarded to Appellant.

IT IS SO ORDERED this _____ day of May, 2011.

Kenneth S. Clark, Jr., Judge